



DEPARTMENT OF THE ARMY
U.S. TOTAL ARMY PERSONNEL COMMAND
ALEXANDRIA VA

REPLY TO
ATTENTION OF

TAPC-PDD-RE (25)

26 JUL 2000

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Personal Papers vs. Federal Records

1. The purpose of this memorandum is to provide guidance regarding personal papers and federal records. With the turnover of key personnel during the summer months and the pending change of administration, it is important to know which records should be incorporated in agency files and which should be transferred to the U.S. Army Military History Institute as personal papers when senior officials leave office.
2. The distinction between personal papers and official records is not always clear. To assist individuals in making these determinations, enclosed is the official Army description of personal papers found in AR 25-400-2, The Modern Army Recordkeeping System, under file number 870-5g. In addition, excerpts from a National Archives and Records Administration (NARA) publication, entitled "Personal Papers of Executive Branch Officials" are included, along with a brief summary. The full text of the NARA publication is available on its web site at www.nara.gov, click on Records Management, then Records Management Publications, to find the 16-page guide.
3. Documents, including extra copies, containing classified information are never personal property and may not be removed from government control by any departing official. However, copies of classified materials reflecting significant decisions, events, or transactions in which those officials are personally involved may be transferred with personal papers to the U.S. Army Military History Institute to facilitate future historical research. Section 4.2(b) of Executive Order 12958, "Classified National Security Information," explicitly states: "Classified information shall remain under the control of the originating agency or its successor in function ... An official or employee leaving agency service may not remove classified information from the agency's control." This prohibition applies to everyone, up to and including agency heads.
4. If you have any questions concerning this guidance, my point of contact is Ms. Sharon Bunting, commercial telephone: 703-806-3712, DSN: 656-3712, e-mail: buntings@rmbo.belvoir.army.mil. The point of contact at the U.S. Army Military History Institute is Mr. Randy Rakers, commercial telephone: 717-245-3631, DSN: 242-3631, e-mail: rakers@awc.carlisle.army.mil.

Enclosure
as


JOHN W. MATTHEWS
Director, Records Management and
Declassification Agency

TAPC-PDD-RE (25)

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TAPC-PDD-RE (25)

SUBJECT: Personal Papers vs. Federal Records

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U.S. ARMY SOUTH, ATTN: SCCS

U.S. ARMY MEDICAL COMMAND, ATTN: MCZX

U.S. ARMY MILITARY DISTRICT OF WASHINGTON, ATTN: ANCS

U.S. ARMY PACIFIC COMMAND, ATTN: APCS

U.S. ARMY SPECIAL OPERATIONS COMMAND, ATTN: AOCS

MILITARY TRAFFIC MANAGEMENT COMMAND, ATTN: MTCS

From AR 25-400-2, The Modern Army Recordkeeping System:

File number: 870-5g

Title: Personal papers

Authority: Not required

Privacy Act: Not applicable

Description: Senior officials, such as Army Secretaries, Under Secretaries, Assistant Secretaries, and general officers, often accumulate copies of documents reflecting significant decisions, events, or transactions in which they are personally involved because of their official positions. Information in these collections is usually retained on a highly selective basis and often documents significant events, activities, decisions, or transactions equally or more effectively than the documentation maintained by the office of record. These collections should be maintained separately and identified with the individual official accumulating them, such as "MG Smith's personal paper files." Official record copies should never be included in these collections. Official record copies of all documentation should be filed in and properly disposed of with related files maintained by the office of record. (All records and copies thereof made or received by military or civilian members of the Army in the course of conducting Government business are official Government files. No person acquires a proprietary interest in any official documentation by virtue of his military or civilian position.)

Disposition: On retirement or separation of the individual, transfer to the U.S. Army Military History Institute, Carlisle Barracks, PA 17013-5008. Earlier transfer is authorized.

From NARA Guide, Personal Papers of Executive Branch Officials:

WHAT ARE PERSONAL PAPERS?

Once officials have fulfilled their responsibility for adequately documenting the agency's organization, functions, and activities in the records of the agency, they may have questions about what work-related and other materials may be considered personal papers.

Most officials accumulate and keep some personal papers at the office. Certain materials are clearly personal, and officials may readily claim them as such. In more difficult cases, they may wish to consult the agency legal counsel, records officer, or other designated official to help determine if the materials in question are personal papers or records of the agency. The NARA regards personal papers as documentary materials that are not used in the transaction of agency business (36 CFR 1222.36). It should be noted that personal papers may refer to or comment on the subject matter of agency business, provided they are not used in the conduct of that business.

Traditionally, personal papers have included the following categories of material:

- * papers created before entering Government service;
- * private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and
- * work-related personal papers that are not used in the transaction of Government business.

In determining the status of a document as an agency record or a work-related personal paper, the courts have developed the following guidance in deciding FOIA cases. This FOIA case law is the most pertinent guidance available for making these distinctions. The meaning of "agency record" for purposes of FOIA is broader than the definition of "records" found in 44 U.S.C. 3301. A document falling outside of the definition of "agency records" for purposes of FOIA would, therefore, based on current case law, also fall outside of the statutory definition of "records." It must be noted, however, that this case law and the guidance based upon it are subject to change.

In examining the court rulings, several general principles may be drawn with regard to agency records/personal papers issues. These principles include:

- * Private materials not created within an agency but brought into it by an employee for reference purposes do not become "agency records" by "mere incidence of location";
- * A document created within an agency cannot be regarded as "personal" merely on the ground that its author is free to dispose of it.
- * Use alone is not conclusive. The only consideration that may be conclusive is the assertion of agency control over a document through institutional requirements mandating its creation or retention.

When officials leave Government service, they may wish to take with them copies of particular agency records, working papers, and nonrecord materials, especially if they plan to continue working in the same general field or are considering writing commentary or memoirs. With agency approval, Government officials may take nonrecord copies of documents, especially materials they drafted, reviewed, or otherwise acted upon. This may more readily be done if officials begin retaining extra copies of such documents at the outset of their Government careers. Even if they have not done so, an agency may arrange to make selected copies prior to their departure. Any charge or fee for creating the extra copies is within the discretion of the agency.

Government officials may be permitted by their agencies to retain and remove nonrecord copies of documents provided that such retention would not:

- 1) diminish the official records of the agency;
- 2) violate confidentiality required by national security, privacy, or other interests protected by law; or other interests protected by law; or
- 3) exceed normal administrative economies.

When deposited in a research institution, such extra copies can serve the needs of historical scholarship.

Brief Summary:

The MARKS definition of personal papers is documents of historical interest that reflect significant decisions, events, or transactions in which senior officials are personally involved because of their official positions. The NARA regards personal papers as documentary materials that are not used in the transaction of agency business, however it also goes on to address particular agency records, working papers, and nonrecord materials that may serve an agency's historical needs.

Decisions for determining which records will be incorporated into agency files, transferred to the U.S. Army Military History Institute, or removed from Army control are sometimes difficult. In those instances, these decisions should be coordinated with legal counsel, records officers, or other designated officials within the agency. Since no person acquires a proprietary interest in any official documentation by virtue of his/her military or civilian position, decisions made by the agency rather than by the individual are more appropriate. Although individual agencies are primarily responsible for managing their own records, the Records Disposal Act also specifies that records of the U.S. government may not be removed or destroyed except as provided under the act, and none of its provisions permit agency officials to remove records.